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MIDDLE DISTRICT OF PENNSYLVANIA

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Samson Omosefunmi
Buffalo Federal Detention Facility
026864117
4250 Federal Drive
Batavia, NY 14020

Re: 1:00-cv-02228

Please file all pleadings directly with the Clerk's Office in which the assigned Judge is located. Do not file any courtesy copies with the Judge's Chambers.

JUDICIAL OFFICERS:

Judge Sylvia H. Rambo
Judge Yvette Kane
Judge William W. Caldwell
Magistrate Judge J. Andrew Smyser

CLERK'S OFFICE ADDRESS:

U.S. District Court
228 Walnut Street
P.O. Box 983
Harrisburg, PA 17108

Chief Judge Thomas I. Vanaskie
Judge A. Richard Caputo
Judge James M. Munley
Judge William J. Nealon
Judge Richard P. Conaboy
Judge Edwin M. Kosik
Magistrate Judge Malachy E. Mannion
Magistrate Judge Thomas M. Blewitt

U.S. District Court
235 N. Washington Ave.
P.O. Box 1148
Scranton, PA 18501

Judge James F. McClure
Judge Malcolm Muir

U.S. District Court
240 West Third Street
Suite 218
Williamsport, PA 17701

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SAMSON OMOSEFUNMI,
Plaintiff

vs.

YORK COUNTY PRISON, et al.,
Defendants

:

:

: CIVIL ACTION NO. 1:CV-00-2228

:

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O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

FILED
HARRISBURG, PA

JUN 04 2001

MARY E. DIAMOND, CLERK
PER 978 DEBON CLERK

The pro se plaintiff, Samson Omosofunmi, has filed a motion for appointment of counsel. This civil rights action alleges that the defendants violated the plaintiff's Eighth Amendment rights by use of excessive force and by failing to treat a medical condition.

This is a civil action, not a criminal one. Hence, the plaintiff has no right to appointed counsel. Rather, appointment of counsel is discretionary with the court and is governed by 28 U.S.C. § 1915(e)(1) which provides that the court "may request an attorney to represent any person unable to afford counsel."

In appointing counsel, the Third Circuit has stated that the court should consider the following factors, among others: (1) whether the claim has arguable merit in fact and law; (2) the plaintiff's ability to present his case; (3) the difficulty of the particular legal issues; (4) the degree to which factual


investigation will be required; (5) the ability of the indigent plaintiff to pursue the investigation; and (6) the effort made to retain an attorney before asking the court to appoint one. See Tabron v. Grace, 6 F.3d 147 (3d Cir. 1993).

We decline to appoint counsel at this time. The most important factor is the plaintiff's effort to obtain counsel on his own. This type of claim is normally handled by private counsel, and the plaintiff has not informed us of the efforts he made, if any, to obtain a lawyer. Additionally, the case does not appear factually or legally difficult.

We also advise the plaintiff of the limited authority that section 1915(e)(1) confers on us. We cannot compel a lawyer to represent him nor do we have funds to pay an attorney who may accept appointment (although attorney's fees are available under 42 U.S.C. § 1988 for any lawyer who represents him if the plaintiff becomes a "prevailing party" in this litigation). Plaintiff should contact private counsel or his local legal aid society for assistance.

Accordingly, this 4th day of June, 2001, it is ordered that

1. The plaintiff's motion for appointment of counsel (doc. 22) is denied.


William W. Caldwell
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SAMSON OMOSEFUNMI,
Plaintiff

vs.

YORK COUNTY PRISON, et al.,
Defendants

:

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: CIVIL ACTION NO. 1:CV-00-2228

:

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FILED
HARRISBURG, PA

JUN 04 2001

MARY E. D'ANDREA, CLERK

PER. DEPUTY CLERK

O R D E R

AND NOW, this 4th day of June, 2001, it is ordered that:

1. The motion (doc. no. 17) to dismiss of defendant Hummel and the motion to dismiss of defendants Kluber, Lutz, Everhart, Francisco and Jane Doe (doc. no. 19) are converted to motions for summary judgment under Fed. R. Civ. P. 56.

2. The Plaintiff is hereby given twenty days from the date of this order to file briefs in opposition to the motions and any supporting evidentiary material.

3. The Defendants may then file reply briefs in accord with the local rules.



William W. Caldwell
United States District Judge